

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA
Dublin Division

IN RE:)	Chapter 12 Case
)	Number <u>91-30080</u>
O'NEAL FARMS, a partnership)	
composed of H.E. O'NEAL)	
ELEANOR O'NEAL AND ALLEN O'NEAL)	
)	
Debtor)	
_____))	
UNITED STATES OF AMERICA)	
on behalf of its agency)	
the FARMERS HOME ADMINISTRATION)	FILED
)	at 3 O'clock & 43 min P.M.
Movant)	Date 8-9-91 -
vs.)	
)	
O'NEAL FARMS, a partnership)	
composed of H.E. O'NEAL,)	
ELEANOR O'NEAL AND ALLEN O'NEAL)	
)	
Respondent)	

ORDER

Before the court is the "Objection To Confirmation Of The Plan And Request For Valuation Hearing" (hereinafter "request for valuation"), filed by the United States of America on behalf of the Farmers Home Administration ("FmHA"). FmHA requests a valuation hearing pursuant to 11 U.S.C. §506 and Bankruptcy Rule 3012. The debtor, O'Neal Farms, objects to FmHA's request for valuation as being untimely filed.

In this court's Order And Notice Relating To Valuation Of The Debtor's Property, entered March 1, 1991, the court required as follows:

If any dispute over valuation cannot be resolved at the creditor's meeting, a hearing for the court to determine valuation will be scheduled but only if a party in interest

files a request pursuant to 11 U.S.C. §506 and Bankruptcy Rule 3012 not later than fifteen (15) days after the meeting of creditors.

The file indicates that FmHA received notice of the March 1 order.

The creditor's meeting took place April 5, 1991 at the United States Courthouse, Dublin, Georgia. FmHA filed its request for valuation July 1, 1991. FmHA states as grounds for its failure to timely file its request for valuation that "the County Supervisor managing the file on this case was unaware of the new 15-day rule."

Bankruptcy Rule 9006(b)(1) provides standards for determining enlargement of time for raising issues before the bankruptcy court:

[W]hen an act is required or allowed to be done at or within a specified period . . . by order of the court, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.

(emphasis added). Because FmHA did not file its request for valuation within the period prescribed by the court, subsection (1) does not apply. Therefore, in order for this court to waive late filing, FmHA must show its untimely filing resulted from "excusable neglect" under subsection (2). E.g., In re: Richard Buick, Inc., 126

B.R. 840 (Bankr. E D Pa. 1991).

Excusable neglect has been defined as "the failure to perform a duty due to circumstances which were beyond the reasonable control of the person whose duty it was to perform."¹ In re: Manning, 4 B.C.D. 304, 305 (Bankr. D. Conn. 1978). The

¹Neither the Bankruptcy Rules nor the Bankruptcy Code define "excusable neglect." Constructions of excusable neglect under F.R.C.P. 60(b) are applicable in defining excusable neglect under Bankruptcy Rule 9006(b)(1). In re: South Atlantic Financial Corporation, 9767 F.2d 814 (11th Cir. 1985).

objecting party "must demonstrate that its failure to file [within the court's] deadline was due to something more than ordinary negligence; it must be something that could not have been prevented by diligence." Matter of Lewis, 93 B.R. 462, 467 (Bankr. S.D. Miss. 1987); In re: Gurney, 20 B.R. 91, 95 (Bankr. W.D. Miss. 1982); In re: Richard Buick Inc., 126 B.R. at 848. Thus the objecting party bears the burden to prove excusable neglect. Reed v. Liberty Consumer Discount Co., 484 F.Supp. 435 (E.D. Pa. 1980); In re: Gurney, 20 B.R. 91; In re: Earle Industries, 67 B.R. 822 (Bankr. E.D. Pa. 1986).

In Lewis, an order of the court noticed all creditors that "any objection to confirmation or valuation must be filed in writing, setting out objection in detail, at least five (5) days prior to confirmation date." Lewis, 93 B.R. at 463. A creditor filed an untimely "Objection to Plan," in which the creditor specifically objected to the debtor's valuation of property, stating as grounds for its late filing that it failed to correctly read the

court's order. The Bankruptcy Court held that counsel's failure to read the order and adhere to the deadlines therein did not constitute "excusable neglect." Id. at 469. Compare Marshall v. Lancarte, 485 F.Supp. 251 (D. N.D. Tex. 1980) (holding a lack of attention to the details required by the court for filing objection to valuation did not constitute excusable neglect); In re: Figueroa, 33 B.R. 298 (Bankr. S.D. N.Y. 1983) (holding that a breakdown of internal procedures did not constitute excusable neglect); Sherrod v. Piedmont Aviation, Inc., 516 F.Supp. 39 (E.D. Tenn. 1978) (holding that simple inadvertence or mistake as to the contents of the Federal Rules of Civil Procedure or unfamiliarity with them did not constitute excusable neglect).²

²The Eleventh Circuit Court of Appeals cogently explained the importance of keeping bar dates set by the bankruptcy court:

The practical, commercial rationale underlying the need for a bar date are manifest. The creditors and bankruptcy court must be able to

FmHA's only explanation for its failure to file its request for a valuation hearing within fifteen (15) days of the

creditor's meeting is that its supervisor was unaware of the requirement. "The element most relevant in an excusable neglect analysis is whether the objector demonstrates a reasonable basis for exercise of the court's discretion" In re: Richard Buick

Inc., 126 B.R. 840, 848 (Bankr. E.D. Pa. 1991). FmHA is listed on the matrix which shows all interested parties who the clerk apprised by mail of the March 1 order. It was the responsibility of FmHA to read this court's order and to comply with its requirements. Any reading of the order should have prevented the untimely filing. FmHA's failure to do so was no more than ordinary negligence. I find FmHA has failed to meet its burden to prove its late filing resulted from excusable neglect. There is no reasonable basis for the court to exercise its discretion to enlarge time pursuant to Bankruptcy Rule 9006(b)(1). It is therefore ORDERED that FmHA's request for valuation is denied.

JOHN S. DALIS
UNITED STATES BANKRUPTCY JUDGE

rely on a fixed financial position of the debtor in order to evaluate intelligently the proposed plan of reorganization for plan approval or amendment purpose. After initiating a carefully orchestrated plan of reorganization, the untimely interjection of an unanticipated claim, particularly a relatively large one, can destroy the fragile balance struck by all the interested parties in the plan. In re: Analytical Systems, Inc., 933 F.2d 939, 942 n. 5 (11th Cir. 1991).

Dated at Augusta, Georgia

this 9th day of August, 1991.